

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Douglas A Plazak POB 1300 Riverside, CA 92502 951-682-1771 <i>Plaintiff or Attorney for Plaintiff</i>	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE	
In re: Lucia Francia <div style="text-align: right;">Debtor(s).</div>	CASE NO.: 6:19-bk-13413-WJ CHAPTER: 7 ADVERSARY NUMBER: 6:20-ap-01137-WJ
Robert S. Whitmore <div style="text-align: right;">Plaintiff(s)</div> Versus Nelson Francia dba Nelson Francia Trucking Company <div style="text-align: right;">Defendant(s)</div>	SUMMONS AND NOTICE OF STATUS CONFERENCE IN ADVERSARY PROCEEDING [LBR 7004-1]

TO THE DEFENDANT(S): A Complaint has been filed by the Plaintiff against you. If you wish to defend against the Complaint, you must file with the court a written pleading in response to the Complaint. You must also serve a copy of your written response on the party shown in the upper left-hand corner of this page. The deadline to file and serve a written response is **09/17/2020**. If you do not timely file and serve the response, the court may enter a judgment by default against you for the relief demanded in the Complaint.

A status conference in the adversary proceeding commenced by the Complaint has been set for:

Date: November 5, 2020
Time: 10:30 AM
Hearing Judge: Wayne E. Johnson
Location: 3420 Twelfth St., Crtrm 304, Riverside, CA 92501

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

You must comply with LBR 7016–1, which requires you to file a joint status report and to appear at a status conference. All parties must read and comply with the rule, even if you are representing yourself. You must cooperate with the other parties in the case and file a joint status report with the court and serve it on the appropriate parties at least 14 days before a status conference. A court–approved joint status report form is available on the court's website (LBR form F 7016–1.STATUS.REPORT) with an attachment for additional parties if necessary (LBR form F 7016–1.STATUS.REPORT.ATTACH). If the other parties do not cooperate in filing a joint status report, you still must file with the court a unilateral status report and the accompanying required declaration instead of a joint status report 7 days before the status conference. **The court may fine you or impose other sanctions if you do not file a status report. The court may also fine you or impose other sanctions if you fail to appear at a status conference.**

KATHLEEN J. CAMPBELL
CLERK OF COURT

Date of Issuance of Summons and Notice of Status Conference in Adversary Proceeding: August 18, 2020

By: "s/" Yvonne Gooch
Deputy Clerk



This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

Douglas A. Plazak, State Bar No. 181709
dplazak@rhlaw.com
REID & HELLYER APC
3685 Main Street, Suite 300
P.O. Box 1300
Riverside, California 92502-1300
Telephone: (951) 682-1771
Facsimile: (951) 686-2415

Attorneys for Robert S. Whitmore,
Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re Lucia Francia,

Debtor.

Robert S. Whitmore, Chapter 7 Trustee,

Plaintiff,

vs.

Nelson Francia dba Nelson Francia Trucking
Company,

Defendant.

Case No. 6:19-bk-13413WJ

Chapter 7

Adv. No.

**COMPLAINT FOR TURNOVER OF
PROPERTY OF THE ESTATE PURSUANT
TO 11 U.S.C. §§ 542 AND 543**

Status Conference:

Date: _____
Time: _____
Courtroom: #304, Third Floor
3420 Twelfth Street
Riverside, CA 92501

Plaintiff, Robert S. Whitmore, Chapter 7 Trustee for the Bankruptcy Estate of Lucia Francia

(“Trustee” and/or “Plaintiff”) alleges as follows:

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JURISDICTION AND VENUE

1
2 1. This adversary proceeding is brought pursuant to rule 7001 of the Federal Rules of
3 Bankruptcy Procedure seeking relief in accordance with sections 363(h), 542 and 543 of Title 11 of
4 the United States Code, and 3439.04, 3439.05 and 3409.07 of the California Civil Code. This court
5 has jurisdiction over this adversary proceeding by virtue of 28 U.S.C. §§ 157 and 1334.

6 2. This action is a core proceeding under 28 U.S.C. § 157.

7 3. Venue of this adversary proceeding in this district is proper pursuant to 28 U.S.C.
8 § 1409(a)

PARTIES

9
10 4. The Trustee is the duly appointed and qualified chapter 7 trustee in the case of
11 Debtor, Lucia Francia ("Debtor").
12

13 5. Trustee is informed and believes, and thereon alleges, that Defendant, Nelson
14 Francia ("Defendant"), is an individual, residing in Bakersfield, California.

BACKGROUND

15
16 6. Debtor filed a voluntary chapter 7 petition on April 23, 2019.

17 7. Trustee is informed and believes, and thereon alleges, that Debtor and Defendant are
18 husband and wife and were married on the date of the bankruptcy filing.
19

20 8. Trustee is informed and believes, that Debtor and Defendant, jointly owned, on the
21 date of filing certain trucks, a list of which are set forth in Exhibit 1 attached hereto.

22 9. Trustee is informed and believes that Defendant is the 100% owner and operator of
23 a business known as Nelson Francia Trucking Company ("FTC") and that FTC uses the truck
24 assets are property of Debtor's Bankruptcy Estate.
25

26 ///

27 ///

28 ///

FIRST CLAIM FOR RELIEF

[Declaratory Relief]

10. Trustee hereby incorporates Paragraphs 1 through 9 herein as though set forth at length.

11. Trustee contends that the Debtor's estate holds a community property interest in and to the assets of Defendant and FTC, as more particularly set forth in Exhibit 1.

SECOND CLAIM FOR RELIEF

[Turnover of Property of the Estate - 11 U.S.C. § 542 and 543]

12. Trustee hereby incorporates Paragraphs 1 through 11 herein as though set forth at length.

13. To the extent that the estate is determined to have an interest in the assets of Defendant and FTC and more particularly set forth in Exhibit 1, Trustee is entitled to turnover of such property, or the value thereof, pursuant to 11 U.S.C. §§ 542 and 543.

WHEREFORE, Trustee prays for relief as follows:

1. On the First Claim for Relief, a determination as to the nature and extent of the estate's interest in the assets of Defendant and FTC;

2. On the Second Claim for Relief, for an order compelling Defendant to turnover such property to the Trustee, or the value thereof;

3. For costs of suit; and

4. For such other and further relief as the Court deems just and proper.

DATED: August 18, 2020

REID & HELLYER, APC

By: /s/ Douglas A. Plazak
Douglas A. Plazak
Attorneys for Robert S. Whitmore

EXHIBIT 1

NELSON FRANCA TRUCKING

Description	Actual Miles	FMV-2017
2005 International Bobtail	1560000	\$4,000.00
2005 International Bobtail	1560000	\$4,000.00
2006 Freightliner Bobtail	1500000	\$4,500.00
2006 Freightliner Bobtail	1430000	\$4,850.00
2006 Freightliner Bobtail	1430000	\$4,850.00
2006 Freightliner Bobtail	1430000	\$5,000.00
2006 Freightliner Bobtail	1430000	\$5,000.00
2006 Freightliner Bobtail	1430000	\$5,000.00
2007 Freightliner Bobtail	1550000	\$6,850.00
2007 Freightliner bobtail	1650000	\$6,850.00
2007 Freightliner Bobtail	1570000	\$6,850.00
2007 Freightliner Bobtail	1350000	\$6,850.00
2009 Freightliner	1250000	\$8,500.00
2009 Freightliner	1240000	\$9,550.00
2009 Freightliner	1240000	\$9,550.00
2010 Freightliner	1040000	\$7,500.00
2010 Freightliner	950000	\$10,000.00
2010 Freightliner	900000	\$13,750.00
2011 Freightliner	820000	\$10,850.00
2011 Freightliner	880000	\$16,550.00
2012 Freightliner Two Axles	855000	\$16,550.00
2013 Freightliner	620000	\$18,350.00
2013 Freightliner	450000	\$18,250.00
2013 Freightliner	800000	\$18,650.00
2013 Freightliner Two Axles	800000	\$16,550.00
2013 Freightliner	620000	\$18,350.00
2013 Freightliner	650000	\$18,350.00
2013 Freightliner	650000	\$18,350.00
2013 Freightliner Two Axles	650000	\$16,750.00
2013 Freightliner Two Axles	880000	\$13,850.00
2014 Freightliner Need Repair	585000	\$23,250.00
2014 Freightliner	625000	\$24,500.00
1994 Ford	1200000	\$5,500.00
1994 Ford	1475000	\$4,500.00
2010 Ford	780000	\$7,850.00
2010 Ford	400000	\$9,500.00
TOTAL		\$399,950.00

Trailers	FMV-2017
1995 Wabas	\$750.00
1997 TRLMO	\$850.00
1997 STUUG	\$850.00
1997 TRLMO	\$850.00
1998 GRTDN	\$1,200.00
1999 DORSE	\$1,200.00
1999 DORSE	\$1,200.00
1999 GRTDN	\$1,950.00
1999 GRTDN	\$1,950.00
2000 WABAS	\$2,250.00
TOTAL	\$13,050.00
TOTAL TRUCKS AND TRAILERS	\$413,000.00

Balance Due for Trucks

Descriptions	Loan No.	Balance Due
BMO/GE	90136262524	\$133,197.00
Wells Fargo Bank	001-0320798-701	\$115,734.96
Wells Fargo Bank	001-0320798-702	\$116,083.25
Total Due		\$365,015.21

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS Robert L. Whitmore, Chapter 7 Trustee	DEFENDANTS Nelson Francia			
ATTORNEYS (Firm Name, Address, and Telephone No.) Reid & Hellyer, APC 951-682-1771 P.O. Box 1300 Riverside, CA 92502-1300	ATTORNEYS (If Known)			
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) COMPLAINT FOR TURNOVER OF PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. §§ 542 AND 543				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(1) – Recovery of Money/Property <input checked="" type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) – Recovery of Money/Property <input checked="" type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23			
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$			
Other Relief Sought				

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Lucia Francia		BANKRUPTCY CASE NO. 6:19-bk-13413WJ
DISTRICT IN WHICH CASE IS PENDING Central	DIVISION OFFICE Riverside	NAME OF JUDGE Wayne Johnson
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Douglas A. Plazak		
DATE August 18, 2020		PRINT NAME OF ATTORNEY (OR PLAINTIFF) Douglas A. Plazak

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
3685 Main Street, Suite 300, Riverside, CA 92501
Mailing: P.O. Box 1300, Riverside, CA 92502-1300

A true and correct copy (1) of the foregoing document entitled: **SUMMONS AND NOTICE OF STATUS CONFERENCE IN ADVERSARY PROCEEDING [LBR 7004-1]** and (2) the accompanying pleading(s) entitled:
COMPLAINT FOR TURNOVER OF PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. §§ 542 AND 543

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* 08/19/2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Douglas A Plazak dplazak@rhlaw.com

United States Trustee (RS) ustpregion16.rs.ecf@usdoj.gov

Robert Whitmore rswtrustee@yahoo.com, rwhitmore@ecf.axosfs.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* 08/19/2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Defendant: Nelson Francia dba Nelson Francia Trucking Company, 3149 Petrol Road, BAKersfield, CA 93308

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

08/19/2020 Wendy M. Patrick

Date Printed Name

/s/ Wendy M. Patrick

Signature